

TENTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, Friday, Sept. 22, 1871. }

Senate met pursuant to adjournment. President Campbell presiding. Roll called. Quorum present.

Absent—Senator Fountain.

Absent, excused—Senator Pickett.

Prayer by the Chaplain.

Journal of yesterday read and adopted.

PETITIONS AND MEMORIALS.

By Senator Dohoney: a "Memorial from Delta county asking an additional week for the terms of the District Court of said county." Read and referred to the Committee on Judiciary.

Special messages from his Excellency the Governor by his private secretary, Mr. Frank P. Britton, as follows:

GOVERNOR'S OFFICE, {
Austin, Sept. 21, 1871. }

(the Honorable Senate of the State of Texas:

GENTLEMEN: I would respectfully ask your advice and consent to the following appointment, to-wit:

Wm. Lewis, Judge, Thirty-second Judicial District.

Very respectfully,

EDMUND J. DAVIS, Governor.

GOVERNOR'S OFFICE, {
Austin, Sept. 21, 1871. }

To the Honorable Senate of the State of Texas:

GENTLEMEN: I would respectfully ask your advice and consent to the following appointments, to-wit:

J. W. Talbot, Inspector of State Penitentiary.

Sanford Gilbert, Director of State Penitentiary.

Very respectfully,

EDMUND J. DAVIS, Governor.

GOVERNOR'S OFFICE, }
Austin, Sept. 21, 1871. }

To the Honorable Senate of the State of Texas:

GENTLEMEN: I would respectfully ask your advice and consent to the following appointments, to-wit:

C. F. Moore, Notary Public, Brazos county.
B. F. Boldridge, Notary Public, Brazos county.
H. T. Downard, Notary Public, Brazos county.
J. F. Beach, Notary Public, Bell county.
Andrew Downing, Notary Public, Bosque county.
C. J. Murphy, Notary Public, Cameron county.
F. D. Fuller, Notary Public, Cameron county.
W. R. Johnson, Notary Public, Galveston county.
Frank O. Seth, Notary Public, Harrison county.
A. W. Rehm, Notary Public, Harrison county.
Myron C. Riggs, Notary Public, Harris county.
A. Britton, Notary Public, Marion county.
D. Sprague, Notary Public, Nueces county.
Charles G. Fitze, Notary Public, Polk county.
J. B. Hollingsworth, Notary Public, Rusk county.
William F. Clarke, Notary Public, Travis county.
L. W. Collins, Notary Public, Travis county.
C. R. Johns, jr., Notary Public, Travis county.
Nicholas C. Read, Notary Public, Washington county.

Very respectfully,

EDMUND J. DAVIS, Governor.

GOVERNOR'S OFFICE, }
Austin, Sept. 22, 1871. }

To the Honorable Senate of the State of Texas:

GENTLEMEN: I respectfully ask your advice and consent to the following appointment, to-wit:

A. P. McCormick, Judge of the District Court for the Eighteenth District.

Respectfully,

EDMUND J. DAVIS, Governor.

Messages read and referred to the Committee on Nominations.

GOVERNOR'S OFFICE, }
Austin, Sept. 22, 1871. }

To the Honorable Senate and House of Representatives of Texas:

GENTLEMEN: I have the honor to enclose a report from the "Auditorial Board," provided for by the act approved May 2, 1871,

in relation to the debt of the State, existing at the time the present State Government was installed.

The recommendations of the Board are worthy of consideration, and I believe they will have the effect, should they be adopted by your body, to place the credit of the State on a much more substantial basis.

Respectfully,

EDMUND J. DAVIS, Governor.

OFFICE OF THE AUDITORIAL BOARD OF THE
STATE OF TEXAS,
September 20, 1871. }

To his Excellency, E. J. DAVIS,

Governor of the State of Texas :

GOVERNOR : The Auditorial Board, through myself, transmits to you the accompanying report, prepared in pursuance to its direction by Col. J. M. Swisher, the auditing clerk.

The course recommended to be pursued by the Legislature is deemed advisable in order that a foundation for public credit may be established by the State. While the Board is restricted in its action by the limits of the law—and it is most narrowly restricted—the Legislature is not. It can act upon considerations of public policy which the Board has not the power to entertain, and can make laws not inconsistent with the Constitution, which will conform to the dictates of equity.

Sound morals demand that the State should allow and pay interest from the date when due, on just claims which have not been and cannot now be paid, for want of funds ; and that due provision should be made for small claims, chiefly of poor men, for personal services, which, as bonds for less than \$500 cannot be issued, stand upon an unjustly disadvantageous footing under the present law.

Attention is also called to the fact that the presentation of any claims to the Board is purely optional, claims not presented not being in anywise prejudiced and not being barred.

A recent indisposition, from the effects of which I have not yet recovered, has prevented me from giving in a more extended manner such views of the law touching that portion of the indebtedness of the State which has been referred to the consideration of the board, as have presented themselves to me, and I am only able to submit the foregoing brief suggestions.

I have the honor to be your obedient servant,

WILLIAM ALEXANDER,

Attorney General and *ex officio* Pres't of the Auditorial Board.

OFFICE OF THE AUDITORIAL BOARD, {
Austin, September 1, 1871. }

To his Excellency E. J. DAVIS, Governor, etc. :

SIR: In accordance with "An act to provide for the payment of the public debt of the State of Texas, approved May 2, 1871," we submit the following report :

The total outstanding debt, including interest to the first of December, 1867, after excluding every debt created between the twenty-eighth January, 1861, and the fifth August, 1865, we find according to the records to be as follows :

1. Eight per cent. bonds, act of March 20, 1861, issued to S. M. Swenson and others.....	\$17,233 56
2. Eight per cent. bonds, act of April 8, 1861.....	75,797 05
3. Ten per cent. Treasury warrants.....	148,689 84
4. Non-interest warrants.....	78,466 51
5. Wise and Parker county minute companies, called out by Gov. Hamilton in 1865.....	3,925 73
6. Unaudited claims, estimated.....	8,323 48

Making a total of.....\$332,435 17

The Auditorial Board of 1866 audited and allowed of the above as follows :

1. Eight per cent. bonds of March 20, 1861.....	\$4,133 56
2. Eight per cent. bonds of April 8, 1861.....	30,389 88
3. Ten per cent. Treasury warrants.....	72,680 05
4. Non-interest warrants.....	35,047 61
5. Wise and Parker county minute companies.....	3,570 76
6. Unaudited claims.....	3,323 48

Making a total of.....\$149,145 34

\$125,100 of this amount is now represented by six per cent. bonds issued in 1867, and known as the Throckmorton bonds. \$24,045 34 is represented by certificates of debt issued by said board.

Upon a careful examination of the transactions of the board of 1866, we have been unable to discover any error in the auditing, taking the Constitution of 1866, and the laws passed in accordance therewith, as being the only guides that board had, with the exception of the sum of \$10,283 13 allowed as interest on the non-interest warrants. This allowance we believe to have been made in error ; but it is a question about which persons may honestly differ.

The Fourteenth Amendment to the Constitution of the United

States provides that "neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for loss or emancipation of any slave, but all such debts, obligations or claims shall be held illegal and void."

In conformity to this amendment the convention of Texas, of 1866, ordained as follows: "That the Legislature of this State shall have no authority, and are hereby forbidden to assume or make any provision for the payment of any portion of the debts contracted or incurred, or warrants issued by this State from the twenty-eighth of January, 1861, until the fifth day of August, 1865, except warrants issued in payment of services rendered or liabilities incurred before the said twenty-eighth day of January, 1861."

The constitution of 1869 goes a step beyond this and excludes a portion of the debt created before the twenty-eighth of January, 1861, to wit: "All unpaid balances, whether of salary, *per diem* or monthly allowance due to employes of the State, who were in the service thereof on the said twenty-eighth day of January, 1861, civil or military, and who gave their aid, countenance or support to the rebellion then inaugurated against the Government of the United States, or turned their arms against said government, thereby forfeited the sums severally due them." All the "ten per cent. warrants issued for military services, and exchanged during the rebellion at the Treasury for non-interest warrants, are hereby declared to have been fully paid and discharged."

These unpaid balances due on the twenty-eighth of January, 1861, amount to but an insignificant sum. The civil employes were paid monthly; their unpaid balances could therefore only consist of their pay from the first to the twenty-eighth January. The military were confined to a few companies called out by Gov. Houston during the month of January, 1861, and consequently their unpaid balances could only consist of fractions of one month's pay.

It is believed that this clause of the Constitution will not exclude over, say, \$10,000. The ten per cent. warrants exchanged at the Treasury during the rebellion, for non-interest warrants, and for which non-interest warrants were outstanding on the fifth of August, 1865, amount to \$78,466 51. Making a total of \$88,466 51.

As the Convention of 1866 did not exclude this character of claims, the Auditorial Board of 1866 redeemed about \$40,000 of them, and issued in lieu thereof the six per cent. bonds known as the Throckmorton bonds. It was for the purpose of excluding this \$40,000 that it was made the duty of the present board to examine all claims for money against the State reported on by the board organized under the provisional act of November 9, 1866, and re-

quiring that where any bond or bonds were given in whole or in part for claims void under the Constitution to cancel such bonds and allow only such portion thereof as were found to be valid. Portions of this \$40,000, varying in amounts from \$1 to \$2000, are found in nearly every claim acted on by the board of 1866, to-wit: out of three hundred and ninety-one claims acted on by that board, two hundred and sixty-four of them embrace this character of debt. To carry out the law under which we are acting these two hundred and sixty-four claims would have to be cancelled and be re-audited. In re-auditing the valid portion the interest would have to be paid, according to the tenor, which is ten per cent. The difference between this and the six per cent. the bonds bear, will amount to about \$15,000, which would leave the sum of \$25,000 saved to the State by repudiating these claims.

The difficulty of carrying out the law does not stop here. The holders of the bonds absolutely refuse to submit them for cancellation, alleging that they were issued in accordance with the Constitution and laws of the State of Texas, of the United States, and that they had paid a valuable consideration for them. They are nearly all in the hands of third parties, purchasers in good faith.

In view of all the circumstances, we respectfully recommend that the action of the Auditorial Board of 1866 be confirmed, and that the Treasurer be instructed to pay the interest on the bonds issued by that board without any further action by this board.

The bonds as before stated, amount to.....	\$125,100 00
The certificates issued by that board, and not exchanged for bonds, but bearing the same rate of interest, amount to.....	24,045 34

Making a total of.....	\$149,145 34
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The bonds fall due on the first of January, 1879. The interest on them is past due since the first of July, 1867.

With the foregoing recommendations carried into effect there will remain outstanding, according to the re- cords, the sum of.....	\$183,290 83
Less unpaid balances and non-interest warrants excluded by the Constitution.....	48,466 51

Leaving.....	\$134,824 32
To which must be added interest from December 1, 1867, to January 1, 1872, estimated.....	\$ 50,000 00
Estimated amount due on account of the penitentiary in- curred since the rebellion and prior to the inaugura- tion of the present State government.....	40,000 00

Estimated amount of equitable claims outstanding, not
shown by the records..... 15,000 00

Making a total of.....\$239,824 32

In pursuance of an act of the Legislature, approved
November 12, 1866, five per cent. specie bonds of
the State of Texas, payable on the first of January,
1879, were issued and deposited in the treasury of
the State to the credit of the University Fund,
amounting to.....\$134,472 26

And to the credit of the Common School Fund,
amounting to..... \$82,168 82

Making a total of.....\$216,641 08

On account of which no provision has been made for the payment
of the interest.

It is believed that the foregoing statement will cover every valid
claim created prior to January 28, 1861, not excluded by the Con-
stitution.

Owing to defects in the law under which we are acting, and the
strict rulings we felt bound to make in accordance therewith, but
few claims have been filed for our action.

The total of claims acted on up to date, and for which certifi-
cates of debt have issued, amount to, principal and interest,
\$16,013 98.

Respectfully submitted,
WILLIAM ALEXANDER,
A. BLEDSOE,
GEORGE W. HONEY.

Attest:

JOHN M. SWISHER, Auditing Clerk.

On motion of Senator Pettit the report of the Auditorial Board
and message of the Governor thereon were referred to the Commit-
tee on Public Debt.

On motion of Senator Mills Senator Baker was added to the
Committee on Nominations.

Message from the House by the Chief Clerk, Mr. Gallant, trans-
mitting for signature of the President the following enrolled House
bills: House bill No. 689, "An act amendatory of an act entitled
'an act prescribing the times of holding the district courts in the
Seventh Judicial District,' approved March 4, 1871;" House bill

No. 671, "An act to provide for the creating of two counties out of the territory now embraced within the limits of Refugio county, and to provide for their organization;" House bill No. 548, "An act to prohibit the sale of intoxicating liquors in the vicinity of Seyene Masonic Male and Female Institute;" House bill No. 78, "An act making an appropriation for repairing and improving the State Cemetery;" House bill No. 437, "An act to incorporate the town of Sulphur Springs, in Hopkins county."

Enrolled bills signed by the President in open session and returned to the House.

Also, transmitting for concurrence House bills, as follows: House bill No. 692, "An act for the relief of William Segar and E. B. Shields;" House bill No. 695, "An act to amend an act to incorporate the city of Brenham and to grant a new charter to said city and to repeal all acts heretofore passed incorporating said city which may be in force by virtue of any existing charter;" House bill No. 704, "An act to incorporate the Yorktown Fire Company No. 1, of the town of Yorktown, in the county of DeWitt;" House bill No. 728, "An act to incorporate the Washington Steam Fire Engine Company No. 1, of Galveston;" House bill No. 698, "An act to amend an act to incorporate the Belton Bridge Company," approved April 12, 1871; House bill No. 719, "An act for the relief of the estate of Charles Garnet, deceased;" House bill No. 714, "An act to incorporate the St. Marys Institute."

Also, returning by request of the Senate, Senate bill No. 69, "An act supplementary to 'an act to provide for the registration of voters,' approved the eleventh day of July, A. D. 1870," the same having been transmitted to the House by mistake.

Under direction of the President the Secretary carried to the House for concurrence the following Senate bills:

Substitute for Senate bill No. 153, "An act to amend an act prescribing the times of holding the district courts in the several judicial districts of the State," approved Aug. 10, 1870. Substitute for Senate bill No. 154, "An act to provide for districting the State of Texas into judicial districts," approved July 2, 1870. Senate bill No. 448, "An act to prescribe the time for the regular annual session of the Legislature for eighteen hundred and seventy-two." Senate joint resolution No. 40, leasing certain real estate in the city of Austin, the property of the State of Texas, to certain Masonic bodies, for the erection of a Masonic Temple thereon.

Also, informing the House that the Senate had passed, with amendment, House bill No. 225, "An act to prohibit the sale of intoxicating liquors within certain limits of the High School at Edom, Van Zandt county, Texas."

Also, without amendments, House bills as follows: House bill No. 174, "An Act to incorporate the Houston Schuetzen Verein;" House bill No. 580, "An act for the relief of R. E. Borden, district attorney of the Third Judicial District;" House bill No. 699, "An act to amend the third section of an act entitled 'an act to amend an act prescribing the times of holding the district courts in the several judicial districts in the State, approved August 10, 1870,' approved March 4, 1871;" House bill No. 717, "An act to incorporate the Union Club of the City of San Antonio."

By leave, Senator Flanagan offered the following resolution, which was adopted:

Resolved, That Senator P. W. Hall be allowed an indefinite leave of absence, to take effect from date.

President Campbell presented a petition of citizens of Marion and Harrison counties, asking charter for a railroad from Jefferson to Marshall. Read and referred to the Committee on Internal Improvements.

REPORTS OF STANDING COMMITTEES.

Report of Committee on Private Land Claims:

COMMITTEE ROOM, }
Austin, Sept. 22, 1871. }

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Private Land Claims, to whom was referred a bill (Senate bill No. 449) entitled "An act to authorize and require the Commissioner of the General Land Office to issue patents upon certain surveys made on the island of Galveston by Sydney T. Fountain, Harry W. Rhodes, William McCarty, Thomas Hanley, George Fry and William McDonald, or their assigns, by virtue of land scrip issued by the Republic of Texas to Thomas Toby," having had the same under due consideration, instruct me to report the bill back to the Senate with the recommendation that it do pass.

G. T. RUBY, Chairman.

Report read and laid over under the rules.

Report of Committee on Education.

COMMITTEE ROOM, }
Austin, Sept. 22, 1871. }

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Education, to whom was referred Senate bill No. 462, have had the same under careful consideration

and a majority thereof instruct me to report it back with the accompanying amendment and recommend its passage.

E. PETTIT, Chairman.

Amendment—After word "shall," in third line section two, insert phrase "upon conviction thereof."

Report read.

On motion of Senator Pyle the rules were suspended to consider the report and bill (Senate bill No. 462) "An act to prohibit the sale of spirituous or intoxicating liquors within two miles of Cedar Grove Masonic Male and Female Institute." Bill read second time.

On motion of Senator Pyle the amendments reported by the Committee on Education were adopted.

Bill ordered engrossed and passed to a third reading as amended.

On motion of Senator Pettit the rules were further suspended and Senate bill No. 462 read third time and passed.

Report of Committee on Engrossed Bills :

COMMITTEE ROOM,
Austin, Sept. 22, 1871. }

Hon. DON CAMPBELL,

President of the Senate :

Your Committee on Engrossed Bills have examined and find correctly engrossed Senate bill No. 455, "An act to authorize Mrs. W. E. Weaver, her associates and assigns, to erect a toll bridge across Rock creek, in Hopkins county."

Respectfully,

G. T. RUBY,
P. W. HALL,
E. L. DOHONEY,

Report read and received.

BILLS AND RESOLUTIONS.

By Senator Rawson : a bill (Senate bill No. 466) to be entitled "An act amendatory of and supplemental to 'an act to give effect to the several provisions of the Constitution concerning taxes.'" Read first time and referred to the Committee on Finance.

On motion of Senator Cole the rules were suspended to take from file Senate bill No. 464, "An act to establish a ferry across the big Brazos river, at or near the northwest corner of Robertson county, in the counties of Robertson and Falls." Read second time.

On motion of Senator Hall the following amendment, reported by the Committee on Roads, Bridges and Ferries, was adopted:

Strike out the word "forty" wherever it occurs, and insert the word "twenty."

Bill ordered engrossed and passed to a third reading, as amended.

On motion of Senator Cole the rules were further suspended and Senate bill No. 464 read third time and passed.

On motion of Senator Cole the rules were further suspended and Senate bill No. 464 read third time and passed.

On motion of Senator Bowers the rules were suspended to take from file House bill No. 698, "An act to amend an act entitled 'an act to incorporate the Belton Bridge Company,' approved April 12, 1871." Read first time and passed to a second reading.

On motion of Senator Pyle the rules were further suspended and the bill read second time and passed to a third reading.

On motion of Senator Bowers the rules were further suspended and the bill read third time and passed.

Senator Pettit moved to suspend the rules to take from file Senate joint resolution No. 32, "Joint resolution for the relief of Moran Brothers." Motion to suspend the rules lost.

On motion of Senator Baker, the rules were suspended to take from file House bill No. 710, "An act to incorporate the Corpus Christi and Rio Grande Railroad Company." Read first time and passed to a second reading.

Senator Hertzberg moved to refer the bill to the Committee on Internal Improvements. Lost.

On motion of Senator Flanagan, the rules were further suspended and the bill read second time and passed to a third reading.

On motion of Senator Cole, the rules were further suspended and House bill No. 710 read third time and passed.

On motion of Senator Mills, the rules were suspended to take from file House bill No. 371. Read first time and passed to a second reading.

On motion of Senator Mills, the rules were further suspended and House bill No. 371 read second time and passed to a third reading.

On motion of Senator Cole, the rules were further suspended and House bill No. 371, "An act to incorporate the Navasota Hebrew Benevolent Society," read third time and passed.

On motion of Senator Douglass, the rules were suspended to take from file Senate bill No. 458, "An act to amend 'an act to incorporate the Sabine and Neches Bridge Company,' passed May 18, 1871." Read second time, ordered engrossed and passed to a third reading.

On motion of Senator Douglass, the rules were further suspended and Senate bill No. 458 read third time and passed.

On motion of Senator Pridgen the rules were suspended to take from file House bill No. 719, "An act for the relief of the estate of Charles Garnet, deceased." Read first time and passed to a second reading.

On motion of Senator Pridgen the rules were further suspended and House bill No. 719 read second time and passed to a third reading.

On motion of Senator Pridgen the rules were further suspended and House bill No. 719 read third time and passed.

Senator Gaines moved a suspension of the rules to take from file House bill No. 695, "An act to amend an act to incorporate the city of Brenham, and to grant a new charter to said city, and to repeal all acts heretofore passed incorporating said city which may be in force by virtue of any existing charter."

Yeas and nays called for and motion to suspend the rules carried by the following vote:

Yeas—Mr. President, Bell, Evans, Flanagan, Ford, Gaines, Hertzberg, Hillebrand, Parsons, Pettit, Pridgen, Rawson, Ruby, Saylor, Tendick—15.

Nays—Bowers, Cole, Dohoney, Douglas, Latimer, Pyle, Shannon—7.

House bill No. 695 read first time.

Senator Gaines moved a further suspension of the rules to place House bill No. 695 on a second reading, yeas and nays called for and motion to suspend the rules lost by the following vote:

Yeas—Mr. President, Baker, Bell, Douglass, Flanagan, Ford, Gaines, Hertzberg, Hillebrand, Mills, Parsons, Pettit, Pridgen, Rawson, Ruby, Saylor—16.

Nays—Bowers, Broughton, Cole, Dohoney, Evans, Latimer, Pyle, Shannon—8.

Senator Parsons moved that the Senate stand adjourned to 10:30 A. M. to-morrow.

Senator Bowers moved that the Senate stand adjourned to 10:30 A. M., Monday. Yeas and nays called for and motion lost by the following vote:

Yeas—Bell, Bowers, Broughton, Cole, Dohoney, Evans, Latimer, Pridgen, Pyle, Shannon—10.

Yeas—Mr. President, Baker, Douglass, Flanagan, Ford, Gaines, Hertzberg, Hillebrand, Mills, Parsons, Pettit, Rawson, Ruby, Saylor—14.

Question recurring on Senator Parsons's motion to adjourn to 10½ A. M. to-morrow, motion carried.

So the Senate, at 12 M., adjourned to 10½ A. M. to-morrow.